

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 4, 2004

To: The Commission
(Meeting of May 6, 2004)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: AB 2499 (J. Horton): Energy Commission: publicly owned
electric utilities: long-term resource plans.
As Amended April 12, 2004**

Legislative Subcommittee Recommendation: Oppose, unless amended.

Summary: This bill require subject new publicly owned utilities to the same resource adequacy requirements as investor-owned electric utilities, to be developed and enforced by the Energy Commission.

Digest: Existing law, Cal. Const. art. XII, sec. 3, authorizes the Commission to regulate private corporations *inter alia* engaged in the production, generation, transmission, or furnishing of heat, light or power directly or indirectly to or for the public.

Existing law, P.U. Code sec. 366.2(d), affirms the Commission's authority to determine the "fair share" of cost responsibility to be borne by direct access customers served by DWR purchases prior to the suspension of direct access.

This bill would require new publicly owned utilities (NPOUs), defined as publicly owned utilities (POUs, as defined in P.U. Code sec. 9604) that took legal action to establish its POU on or after January 1, 2001 and began to serve customers on or after July 1, 2005, to meet the same resource adequacy requirements as electrical corporations (ECs).

This bill would require the Energy Commission (CEC) to develop and adopt resource adequacy standards for NPOUs and require NPOUs to submit long-term resource plans to the CEC, as well as updates every three years, to the CEC.

This bill would prohibit NPOUs from providing electric service until that NPOUs governing body makes two findings, supported by a written record: (1) the CEC has approved the NPOUs long-term resource plan and (2) the public interest and necessity requires that the NPOU provide retail electric service and that “the anticipated public good outweighs the reasonable identified risks.”

This bill specifies that its provisions do not limit any other POU’s obligations to satisfy resource adequacy requirements.

This bill would require the Commission to adopt specified requirements for NPOU customers who return to the EC service to protect other EC customers from cost-shifting.

Analysis: This bill sets out regulation of new publicly owned electric utilities regarding resource adequacy.

Local Publicly Owned Electric Utilities are defined in the Public Utility Code at 9604(d). It means a municipality or municipal corporation operating as a “public utility” furnishing electric service... a municipal utility district furnishing electric service... a public utility district furnishing electric services... an irrigation district furnishing electric services ... or a joint powers authority that includes one or more of these agencies that owns generation or transmission facilities, or furnishes electric services over its own or its members electric distribution system. All of these types of agencies are subdivisions of state government. This category does not include privately owned or investor owned electric utilities.

Setting a resource adequacy requirement for new publicly owned electric utilities is consistent with state policy, including policy stated in the Energy Action Plan and in the Commission’s own decisions.

The Energy Action Plan has as its primary goal the provision of “adequate, reliable, and reasonably-priced electrical power and natural gas supplies, including prudent reserves....” It is necessary for all providers of electric service, including new publicly owned electric utilities, to be mindful of the need for resource adequacy. This legislation is, in a sense, the state reminding itself that its own sub-units need to do their part in this effort.

In the Procurement Proceeding (R.01-10-024) the Commission has taken up resource adequacy. Decision D.04-01-050 determined that all Load Serving Entities (LSEs), including not only the Investor-Owned Utilities (IOUs) but also the Electric Service Providers (ESPs) should be responsible to procure reserves to serve their customers.¹ That section discusses jurisdictional issues and cites Public Utility Code sources indicating that the Commission has the ability to require an ESP or community aggregator to acquire adequate reserves. This decision does not address the applicability of these provisions to municipal utilities.

¹ See D. 04-01-050, at pp. 34-43.

Therefore, maintaining resource adequacy responsibility for POU's is an important goal, consistent with Commission decisions. The bill's major flaw in this regard is that this responsibility is not directed to all POU's; it is just directed to new POU's.

Municipal utilities should not be exempted from resource adequacy requirements. Their customers deserve service no less reliable than the rest of the state. Moreover, exempting any group of LSEs from the resource adequacy requirement will have the effect of increasing the burden on those remaining customers whose LSEs are subject to the requirements.

Therefore, AB 2499 should be amended to require resource adequacy of all POU's.

Returning to Bundled Service

The Commission developed a Cost Responsibility Surcharge (CRS) to ensure that direct (DA) customers continued to bear the costs of the Department of Water Resources (DWR) Energy Contracts signed in early 2001 on behalf of all of the state's electric service customers. Decision D.02-11-022 established mechanisms to implement CRS on DA customers within the service territories of the three IOUs. The purpose of that decision is to prevent departing customers from imposing costs on the remaining customers.

The Commission most recently adopted procedures for proxy pricing for DA customers that are temporarily receiving bundled service from the IOUs as they switch from one DA provider to another. Decision D.04-01-013 determined that such customers should be charged energy costs from the Cal-ISO's short-term energy markets rather than the energy rates in the relevant retail tariffs reserved for other bundled service customers. That policy is consistent with the proposed legislation.

Responsibility for Maintaining Resource Adequacy Requirements

As pointed out above, the Commission, in collaboration with the ISO, is developing resource adequacy requirements for the IOUs and all other LSEs, including ESPs. By setting jurisdiction for newly formed POU's under the CEC, this bill may be setting up separate agencies to have jurisdiction over the same matter, though not over the same entities.

A more appropriate entity to monitor and maintain POU's resource adequacy requirements would be the Independent System Operator.

Steve St. Marie of the Commission's Energy Division wrote a significant portion of this analysis.

Recommended Amendments:

Therefore, AB 2499 should be amended to require all POU's to observe resource adequacy requirements to be enforced by the Independent System Operator.

LEGISLATIVE HISTORY

Assembly U&C: 12-0 (do pass) (4/19/04)

Asm. Appropos: referred to suspense file (4/28/04)

SUPPORT/OPPOSITION

Support: Congress of California Seniors, Sempra Energy, Pacific Gas & Electric, Southern California Edison, The Utility Reform Network (TURN).

Opposition: Alameda Power & Telecom, California Municipal Utilities Association (CMUA), City of Azusa, City of Pasadena, City of Rancho Cucamonga, City of Roseville, League of California Cities

LEGISLATIVE STAFF CONTACT

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Date: May 4, 2004

BILL LANGUAGE:

BILL NUMBER: AB 2499 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 12, 2004

AMENDED IN ASSEMBLY MARCH 26, 2004

INTRODUCED BY Assembly Member Jerome Horton

FEBRUARY 19, 2004

An act to add Chapter 5.5 (commencing with Section 25450) to Division 15 of the Public Resources Code, and to add Section 378.5 to the Public Utilities Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2499, as amended, Jerome Horton. Energy Commission: publicly owned electric utilities: long-term resource plans.

(1) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act also requires the Energy Commission to undertake a continuing assessment of trends in the consumption of electricity and other forms of energy and to analyze the social, economic, and environmental consequences of those trends and to collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources, forecasts of future supplies and consumption of all forms of energy.

This bill would require *new* publicly owned electric utilities, as defined, to meet certain resource adequacy requirements. The bill would require a *new* publicly owned electric utility, before commencing operation ~~or~~ and providing electric energy to ~~an additional~~ *new* retail end-use ~~customer~~

customers on or after July 1, 2005, to obtain Energy Commission approval of a long-term resource plan, and to update the plan at least every 3 years. The bill would require the Energy Commission, on or before ~~July~~ May 1, 2005, to develop and adopt the requirements that a *new* publicly owned electric utility is required to meet in its long-term resource plan. The bill would require the governing body of a *new* publicly owned electric utility to adopt findings, as specified, before providing electric service or expending funds or incurring any risk or liability, contractual, contingent or otherwise, to provide that service.

(2) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the Public Utilities Commission to establish rules for all public utilities, subject to control by the Legislature.

The bill would require the Public Utilities Commission to ~~impose a nonbypassable charge on former customers of an electrical corporation that take electric commodity service from a publicly~~

~~owned electric utility~~ adopt requirements for former customers of a new publicly owned electric utility that commence taking electric commodity service from an electrical corporation to prevent the subsidization of those former new publicly owned electric utility customers by the ~~existing~~ other customers of the electrical corporation.

(3) Existing law makes a violation of an order or requirement of the Public Utilities Commission a crime.

This bill, by requiring the Public Utilities Commission to ~~impose a new charge~~ adopt requirements, would make a failure to ~~collect or pay the charge~~ meet those requirements a new crime, thereby imposing a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The reliable supply of electricity is essential to the health, safety, and economic well-being of all state consumers.

(b) Due to the interconnected nature of the electric transmission and distribution systems, all California customers have vested interest in ensuring that all state utilities provide reliable electric service.

(c) Since the California electricity crisis, there has been a renewed interest in creating publicly owned utilities. Before the ~~crisis, the last publicly owned utility was established in the late 1940s.~~ crisis, almost all of the publicly owned utilities were established before 1990, the preponderance of them being established before 1950.

(d) It is in the interest of all state consumers to ensure that newly formed publicly owned utilities provide reliable service.

(e) To ensure that customers of newly formed publicly owned electric utilities receive reliable service, each ~~such~~ new entity should adopt a resource plan to ensure reliable service for their customers.

(f) The State Energy Resources Conservation and Development Commission should use its technical expertise to evaluate, certify, and enforce those resource plans and provide assistance in the preparation of these plans. Customers of a newly formed publicly owned electric utility should be allowed to review and comment on the resource plan.

(g) The Public Utilities Commission should establish rules to ensure that there is no cost-shifting between customers that remain with their existing utility and customers that receive service from newly created publicly owned electric utilities.

SEC. 2. Chapter 5.5 (commencing with Section 25450) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 5.5. RESOURCE ADEQUACY FOR New PUBLICLY

OWNED ELECTRIC UTILITIES

25450. As used in this chapter, ~~"publicly~~
 "new publicly owned electric utility" means a local publicly
 owned electrical utility, as defined in subdivision (d) of Section
 9604 of the Public Utilities Code, that ~~declared its~~
~~intention~~ took legal action to establish a
 publicly owned electric utility on or after January 1, 2001, and that
 provides electric energy commodity service to new ~~or~~
~~additional~~ retail customers on or after July 1, 2005.

25451. (a) In order to provide reliable and sustainable electric
 commodity service to end-use retail customers of new
 publicly owned electric utilities, new publicly owned
 electric utilities shall meet the same requirements for resource
 adequacy as applicable to an electrical corporation, including
 reserve requirements.

(b) Before commencing operation ~~or~~ and
 providing electric energy to any ~~additional~~
 retail end-use customer on or after July 1, 2005, a new
 publicly owned electric utility shall obtain approval of a long-term
 resource plan from the commission.

(c) On or before ~~July~~ May 1, 2005,
 the commission shall develop and adopt the requirements that a
 new publicly owned electric utility is required to meet in its
 long-term resource plan to ensure compliance with subdivision (a).

(d) After receiving approval of its initial long-term resource
 plan, a new publicly owned electric utility shall submit
 updates to its long-term resource plan to the energy commission at
 least once every three years.

(e) The long-term resource plans submitted to the commission under
 this section shall be made available for public inspection, subject
 to the confidentiality requirements of Section 25322.

(f) Any person or entity may challenge the adequacy of a new
 publicly owned electric utility's long-term resource plan
 submitted under this section in accordance with rules adopted by the
 commission.

25452. Before providing electric service or expending funds or
 incurring any risk or liability, contractual, contingent, or
 otherwise, to provide that service, the governing body of a new
 publicly owned electric utility shall adopt, in a public
 hearing that allows for public participation, both of the following
 findings, supported by a written record:

(a) The commission has approved the new publicly owned
 electric utility's long-term resource plan pursuant to Section 25451.

(b) The public interest and necessity requires that the new
 publicly owned electric utility provides retail electric
 service and the anticipated public good outweighs the reasonably
 identified risks.

25453. *Nothing in this chapter limits any obligation of a
 publicly owned electric utility, as defined in subdivision (d) of
 Section 9604 of the Public Utilities Code, and not subject to this
 chapter, to satisfy the resource adequacy requirements of their
 electric load.*

SEC. 3. Section 378.5 is added to the Public Utilities Code, to
 read:

~~378.5. The commission shall impose a nonbypassable charge on
 former customers of an electrical corporation that take electric
 commodity service from a publicly owned electric utility, as defined
 in Section 25450 of the Public Resources Code, to prevent the~~

~~subsidization of those customers by the existing customers of the electrical corporation.~~

378.5. The commission shall adopt requirements for former customers of a new publicly owned electric utility, as defined in Section 25450 of the Public Resources Code, that commence taking electric commodity service from an electrical corporation to prevent the subsidization of those former new publicly owned electric utility customers by the other customers of the electrical corporation.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.